IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO No.330 of 2000

Decided on : November 7, 2006

New India Assurance Company **…..Appellant.**

VERSUS

Smt. Baggo and others **…..Respondents.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the Appellant : **Mr. K.D. Sood, Advocate, with Ms Sunita Sharma, Advocate.**

For the Respondents : **Mr. R.K. Gautam, Senior Advocate, with Mr. Anurag Sharma, Advocate, for respondents No.1 and 2.**

None for respondent No.3.

Surjit Singh, Judge (Oral)

Heard and gone through the record.

2. Respondents No.1 and 2 had filed a petition, under Section 22 of the Workmen's Compensation Act, 1923, before the Commissioner under the Workmen's Compensation Act, seeking award of compensation for the death of their son in an accident during the course of employment with respondent No.3.

3. The Commissioner ordered the payment of Rs.50,000/- by way of interim compensation vide order dated 4.1.1999. Direction was given to the appellant-Insurance Company, with whom the employer, respondent No.3, had an agreement of indemnification, to pay the interim compensation of Rs.50,000/-, under Section 140 of

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Whether the reporters of the local papers may be allowed to see the Judgment?

the Motor Vehicles Act, within 45 days, failing which interest was ordered to be paid at the rate of 12%. The matter was finally disposed of vide order dated 23.8.1999. The total amount of compensation payable to respondents No. 1 and 2 was worked out at Rs.2,11,000/-. After adjusting the amount of Rs.50,000/-, awarded by way of interim compensation, a sum of Rs.1,61,000/- was awarded on account of compensation with interest at the rate of 12% per annum from the date of the accident, i.e. 2.7.1997, to the date of the payment of the aforesaid money. In addition, penalty of Rs.1,05,500/- was also awarded.

4. Admitted case is that the appellant, in terms of the award of interim compensation, dated 4.1.1999, as also the final award dated 23.8.1999, deposited the amounts of interim compensation as also the amount of compensation finally adjudged. Amount of interest, in terms of the final order, was also deposited.

5. In March, 2000, respondents No. 1 and 2 filed a petition seeking to recover a sum of Rs.12,000/- and odds on account of interest on the amount of interim compensation of Rs.50,000/- from the date of the accident to the date of the deposit of the aforesaid amount of compensation with the Commissioner. The Commissioner passed an order on 14.6.2000 on the application directing that a sum of Rs.13,478/- be paid to the claimants, i.e. respondents No. 1 and 2, on account of interest on the amount of interim compensation of Rs.50,000/-. This order is impugned by the Insurance Company-appellant by means of the present appeal.

6. The order has been assailed on two grounds. First, the amount of interim compensation having been paid within 45 days of the passing of the order, dated 4.1.1999, no interest was required to be paid on the said amount, in terms of the said order. Secondly, it is alleged that the amount has not been worked out correctly.

7. I have heard the learned counsel for the parties and gone through the record.

8. No doubt, the law mandates the Commissioner vide Section 4-A of the Workmen's Compensation Act, to award interest on the amount of compensation, where it is not paid by the employer within one month of the accident, from the date of the accident to the date of the payment of amount of compensation, but once the Commissioner had passed an order for the payment of interim compensation and directed that the interest would be payable on the said amount only if the said amount was not deposited within 45 days, he could not have passed an order for the payment of interest on the aforesaid amount by the impugned order, because the order amounts to review of his order dated 4.1.1999. And he does not have the power of review.

9. The Workmen's Compensation Act, 1923, or the Rules framed there-under not only do not give the power of review to the Commissioner, either explicitly or impliedly, but sub-Rule (2) of Rule 32 makes it absolutely clear that the Commissioner cannot review his order. The said Rule is reproduced below for ready reference:

> **"32. Judgment.----** (1) ....
>
> (2) The Commissioner, at the time of signing and dating his judgment, shall pronounce, his decision,

> and thereafter no addition or alteration shall be made to the judgment other than the correction of a clerical or arithmetical mistake arising from any accidental slip or omission.**"**

10. This Court, in ***Oriental Insurance Co. Ltd. V. Kala Devi and others, 1997 ACJ 17,*** has authoritatively held that the Commissioner under the Workmen's Compensation Act does not have the power of review and rather Rule 32 prohibits the review by Commissioner.

11. In view of the abovestated position, appeal is accepted. Impugned order dated 14.6.2000 passed by the Commissioner under the Workmen's Compensation Act, is set aside.

Appeal stands disposed of.

November 7, 2006(sd) **(Surjit Singh), J.**